

PATENT

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

Application Number: 10/679,654
Filing Date: 10/6/2003
Applicant(s): Keith Bryan Knight
Entitled: TUNELLING NON-HTTP STREAMS
THROUGH A REVERSE PROXY
Examiner: John B. Walsh
Group Art Unit: 2151
Attorney Docket No.: LOT9-2003-0023 (7321-009U)

REPLY BRIEF

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This Reply Brief is submitted under 37 C.F.R. § 41.41 in response to the EXAMINER'S ANSWER dated February 22, 2008.

The Examiner's response to Appellants' arguments submitted in the Appeal Brief of December 3, 2007, raises additional issues and underscores the factual and legal shortcomings in the Examiner's rejection. In response, Appellants rely upon the arguments presented in the Appeal Brief of December 3, 2007, and the arguments set forth below.

In response to the arguments presented on pages 3 through 5 of the Appeal Brief in which Appellants argued that Subramaniam does not teach exchanging non-HTTP data over a secured connection without encapsulating the non-HTTP data within HTTP messages, the Examiner asserted the following on pages 6 through 7 of the Examiner's Answer:

Subramaniam et al. discloses one of ordinary skill in the art could use other protocols, such as FTP, for exchanging data (column 7, lines 65-67). **Subramaniam does not disclose that the FTP data is encapsulated within HTTP data, thus Subramaniam discloses the applicant's claimed limitation of responsive to establishing said connection, maintaining said connection exchanging non-HTTP data over said secured connection without encapsulating said non-HTTP data within HTTP messages," since the use of FTP data is non-HTTP data.** The applicant has further argued a particular circumstance wherein Subramaniam does not disclose the claimed limitation, however that is one of many circumstances that can be envisioned and the circumstance of using FTP not encapsulated in HTTP messages, is disclosed by Subramaniam (see at least col. 7, lines 65-67 and col. 9, lines 48-56).

Thus, Examiner persists in relying upon what is not taught by Subramaniam to establish a prima facie case of obviousness--a legal absurdity in view of the requirement that the Examiner locate every element of every limitation of the rejected claims within the cited art or demonstrate that the differences between the prior art and the claimed invention are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.

Appellants emphasized just such a point on Page 6 of the Appeal Brief filed on December 3, 2007 as follows:

The Examiner has failed, however, to recite a single portion of Subramaniam disclosing the exchange of FTP data outside of HTTP. To wit, **simply because Subramaniam does not affirmatively teach the exchange of FTP data through HTTP messages (because Subramaniam says nothing other than mentioning "FTP files"), does not mean that Subramaniam implicitly teaches the exchange of FTP data outside of HTTP.** Yet, **as repeatedly noted by the Applicant** in the Responses of September 29, 2005 and on October 17, 2006, the plain text of Subramaniam in column 7 **requires the use of HTTP messages for all exchanges of data in the secure connection.**

Appellants further referenced United States Patent No. 5,825,890 to Elgamal et al. (Elgamal) as relied upon by Subramaniam at the portion of Subramaniam relied upon by the Examiner. In referencing Elgamal on page 4 of the Appeal Brief, Appellants recited Elgamal as follows: "Note

that the protocol known as HTTP itself is not altered or modified." Thus, Appellants proved without question that Subramaniam requires the use of HTTP messages for all exchanges of data in the secure connection--a point that remains rebutted.

In response to the arguments presented on pages 5 through 6 of the Appeal Brief in which Appellants argued that Examiner relied upon a reference not for what the reference teaches, but for what the reference does not teach, the Examiner asserted the following on pages 7 through 8 of the Examiner's Answer:

The Appellant argues Subramaniam provides no teaching of any exchange of FTP data outside of the HTTP protocol. See Subramaniam at col. 9, line 48-56 wherein the URL transformer replaces non-secure URLs with secure URLs, wherein the URL may indicate FTP. The URL would indicate FTP not HTTP and is therefore an exchange of FTP data outside of HTTP. The FTP would be transformed into a secure URL which can be FTPS (FTP over SSL) since Subramaniam discloses modifying to promote use of secure sockets layer communication (see col. 3, lines 35-39). (See also <http://en.wikipedia.org/UploadFTPS> for description of FTP over SSL).

In this assertion, Examiner erroneously equates URLs (uniform resource locators) with FTP data--a factual mistake. FTP data is data transmitted according to the "file transfer protocol", whereas a uniform resource locator as it is well known is an address. Just because a URL can reference FTP data does not make a URL FTP data contrary to Examiner's assertion.

Appellants object to Examiner's introduction of the Wikipedia citation in the Examiner's Answer as evidence previously not in the record. Examiner has not indicated in the Examiner's Answer that a new ground of rejection has been set forth pursuant to MPEP 1207.03 and Examiner clearly has not engaged the required steps for asserting a new ground of rejection also set forth in MPEP 1207.03. Most importantly, the reference relied upon by the Examiner has not been established to be prior art as the reference had not been previously cited. It appears to Appellants however, that the Wikipedia reference relied upon by Examiner post dates

Appellants' priority date and therefore is not prior art to Appellants' claims. Even still, the cited portion of the Wikipedia reference recites as follows:

FTPS (commonly referred to as FTP/SSL) is a name used to encompass a number of ways in which FTP software can perform secure file transfers. Each way involves the use of a SSL/TLS layer below the standard FTP protocol to encrypt the control and/or data channels. It should not be confused with either SSH file transfer protocol (SFTP), or FTP over SSH (no acronym).

Thus, the Wikipedia reference, though not prior art to Appellants' claims, only shows that FTP data can be transmitted securely. There is no tie in to the use of a reverse proxy as it relates to Appellants' claims. Hence, Examiner has not explained how one skilled in the art would combine the Wikipedia reference with Subramaniam at the time of Appellants' invention to arrive at Appellants' invention—a prime facie case of obviousness.

For the reasons set forth in the Appeal Brief of December 3, 2007, and for those set forth herein, Appellants respectfully solicit the Honorable Board to reverse the Examiner's rejection under 35 U.S.C. § 103(a).

To the extent necessary, a petition for an extension of time under 37 C.F.R. § 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 12-2158, and please credit any excess fees to such deposit account.

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Respectfully submitted,

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